

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON
TRANSCRIPT OF PROCEEDINGS

IN RE: C.R. BARD, INC., PELVIC
REPAIR SYSTEM PRODUCTS LIABILITY MDL NO.
LITIGATION 2:10-md-2187

6 IN RE: AMERICAN MEDICAL SYSTEMS, MDL NO.
7 INC., PELVIC REPAIR SYSTEM 2:12-md-2325
PRODUCTS LIABILITY LITIGATION

IN RE: BOSTON SCIENTIFIC MDL NO.
9 CORPORATION, PELVIC REPAIR SYSTEM 2:12-md-2326
PRODUCTS LIABILITY LITIGATION

11 IN RE: ETHICON, INC., PELVIC MDL NO.
REPAIR SYSTEM PRODUCTS LIABILITY 2:12-md-2327
12 LITIGATION

13
14 IN RE: COLOPLAST CORP., PELVIC MDL NO.
REPAIR SYSTEM PRODUCTS LIABILITY 2:12-md-2387
LITIGATION

16 IN RE: COOK MEDICAL, INC., MDL NO.
PELVIC REPAIR SYSTEM PRODUCTS 2:13-md-2440
17 LIABILITY LITIGATION

TRANSCRIPT OF STATUS CONFERENCE
FEBRUARY 05, 2015
BEFORE THE HONORABLE JOSEPH R. GOODWIN,
UNITED STATES DISTRICT JUDGE,
AND CHERYL A. EIFERT,
UNITED STATES MAGISTRATE JUDGE

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1 PROCEEDINGS had before The Honorable Joseph R. Goodwin,
2 District Judge, and Cheryl A. Eifert, Magistrate Judge, United
3 States District Court, Southern District of West Virginia, in
4 Charleston, West Virginia, on February 5, 2015, at 10:00 a.m.,
5 as follows:

6 THE COURT: Good morning.

7 RESPONSE: Good morning, Your Honor.

8 THE COURT: Welcome back to Charleston. It's nice to
9 see you all today. My only concern is you're all starting to
10 look very familiar.

11 (Laughter.)

12 THE COURT: As suggested earlier this morning, it
13 seems a little bit like a reunion and that should be
14 concerning to all of us.

15 I believe that our court reporter, Ms. Farrell, knows
16 most of you, but I ask that each of you identify yourselves
17 before you speak brilliantly on any subject.

18 I would like to cover the identified agenda items
19 first. We have some issues common to MDLs 2187, 2325, 2326,
20 2327, 2387, and 2440.

21 The first topic on the agenda common to all the MDLs
22 is what has been characterized as establishing a case workup
23 for multi-product, multi-defendant cases.

24 Who wants to speak for the plaintiffs on this? Mr.
25 Garrard?

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1 MR. GARRARD: Your Honor, Henry Garrard.

2 Your Honor, during the course of this litigation, we
3 have had various waves of cases established for workup,
4 particularly in relation --

5 THE COURT: Excuse me, Henry. I'm going to have to
6 fix this chair.

7 MR. GARRARD: Yes.

8 THE COURT: I just about disappeared.

9 MR. GARRARD: I had one a moment ago suitable for a
10 midget so I swapped chairs so I could at least see over the
11 podium.

12 (Pause)

13 THE COURT: All right, Mr. Garrard, I'm sorry. Go
14 ahead.

15 MR. GARRARD: Yes, sir.

16 During the course of the litigation, we have had
17 waves of cases established for workup both as bellwethers and
18 as larger waves of cases. In those proceedings, the Court has
19 previously made the determination that we should not be
20 placing cases for workup in which more than one defendant's
21 products were actors, and by that I mean, where we claim as
22 plaintiffs that, for example, a Boston Scientific product and
23 an Ethicon product both caused injury to the plaintiff, or a
24 Bard product and an Ethicon product both caused injury to the
25 plaintiff.

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1 We have now reached a point in this litigation that
2 we have a significant number of clients who have not been
3 processed through the system, established for case workup or
4 established for trials and, on behalf of the plaintiffs
5 collectively, we are asking the Court to allow us to come to
6 you with suggestions of workup of multi-product,
7 multi-defendant cases in which we believe we can prove that
8 two manufacturers' products were bad actors. It's really that
9 simple in terms of what we're asking for.

10 I have gone through cases and I have a list of cases
11 that, if the Court wanted it, I could share with the Court. I
12 need to put it in a different form than the way I have it. I
13 know Mr. Clark has done the same thing. He may have some
14 comments about this in addition to mine. But we believe that
15 it is time, on behalf of those clients, that we move forward
16 trying to establish their cases, trying to prove their cases
17 and bring them to the trial position.

18 THE COURT: Who would like to respond for the
19 defendants?

20 MR. ADAMS: I will, Your Honor. And I can do it from
21 here, Judge.

22 THE COURT: That's fine.

23 MR. ADAMS: Basically -- Robert Adams on behalf of
24 Boston Scientific.

25 Basically, there's two responses that I'd like to

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1 make to Mr. Garrard's proposal.

2 First, there is a good reason why the Court has
3 stayed away from these types of cases. I think -- I
4 definitely know with respect to Boston Scientific, and I think
5 I could speak for the other defendants, that the
6 multi-product, multi-defendant cases represent an extremely
7 small percentage of the overall inventory of our cases. With
8 respect to Boston Scientific, those types of cases, for all of
9 our cases, consist of basically 10 percent of the inventory.
10 We had made those arguments before in connection with other
11 hearings when the Court has dealt with this same issue.

12 The other point that I would like to make is that
13 I think it is also important that if we are trying to
14 determine what are representative cases for trials, these
15 cases do not fit within that mold. The most representative
16 cases for trials, to give us some benchmark, are single or
17 no-revision SUI cases.

18 On behalf of Boston Scientific, we have had trials of
19 11 plaintiffs and, so far, we have not tried a single case
20 involving an SUI product with a non-revision.

21 Our inventory is such that 66 percent of our cases
22 are SUI cases, and within that pie of SUI cases, 81 percent
23 are non-revision cases; therefore, those are the most
24 representative cases, and if there is anything that should be
25 worked up for trial, it is those cases.

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1 That's all I have, Your Honor.

2 THE COURT: All right. Mr. Clark?

3 MR. CLARK: Your Honor, Clayton Clark.

4 First, Your Honor, with regard to the SUI cases that
5 Mr. Adams speaks of, on behalf of the plaintiffs, we would
6 offer to the Court and suggest that those cases do be set for
7 trial. I'm not quite understanding specifically what he was
8 referring to, which cases they are, but we are ready to set
9 any numbers of cases in any groups that the Court deems
10 appropriate or capable of actually handling, with the size of
11 the docket that we have, so we agree. Those cases should be
12 set in consolidation, in large numbers, in the appropriate
13 districts whenever the Court is ready.

14 With regard to the 10 percent that we're talking
15 about, two years ago we heard this basic identical argument
16 that we're supposed to not address the women that are most
17 hurt, the cases where we have the largest amount of damages.
18 And we see that more and more, as cases get picked, that when
19 a case has been in the system for two years or three years or
20 five years, the system being coming through us as well as
21 through Your Honor's court, that we see surgeries beginning to
22 mount up and multiple different defendants being involved in
23 those surgeries. We're not asking for this to take over the
24 process. We're just asking that the 10 percent be addressed
25 somehow, in some orderly fashion, and we also stand ready to

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1 set as many of the individual SUI cases as the defendants will
2 agree to.

3 MR. GARRARD: Your Honor, may I?

4 THE COURT: Sure.

5 MR. GARRARD: In the workup that was done in relation
6 to the Ethicon cases, where there was a survey of cases, my
7 understanding is 16 percent of those cases were multi-product,
8 multi-defendant cases, so it's not such a simple, small
9 number.

10 The second thing I would add is that in most
11 discussions that we have with regard to the cases, the
12 defendants always raise that there are multi-defendants
13 involved in this, therefore, my share should be much smaller.
14 So it's not an insignificant issue and it's not an
15 insignificant number of cases that we believe we need to be
16 able to bring forward.

17 THE COURT: All right.

18 MS. COHEN: Judge, if I may?

19 THE COURT: Yes.

20 MS. COHEN: Good morning. Lori Cohen on behalf of
21 defendant Bard.

22 Just to join in with what Mr. Adams said, our numbers
23 are very similar as well. We have about 10 percent that are
24 multi-manufacturer cases of this sort, and, again, like
25 Mr. Adams said, in our MDLs, we have not had any SUI case set

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1 for trial or go to trial, and we have about 70 percent, I
2 would say, statistically, of SUI cases.

3 THE COURT: I think we had some set that didn't go.
4 I think we had one or two set, didn't we, an SUI case? We did
5 not?

6 MS. COHEN: I don't think so, respectfully, Your
7 Honor.

8 THE COURT: That's okay.

9 MS. COHEN: But, again, we have similar statistics.
10 And then, of course, as you know, with our recent
11 pretrial orders and the workups with Bard, 200, 300, that we
12 had specific provisions excluding these types of cases, and
13 now we have large batches of cases ready to be dealt with by
14 remand or trial, and so, having gone through all that, to now
15 talk about a new batch, which was specifically excluded from
16 those, we just think the timing is not appropriate at this
17 time, Your Honor.

18 THE COURT: Yes?

19 MS. JONES: Your Honor, I rise -- Christy Jones on
20 behalf of Ethicon.

21 I rise only because Ethicon has been mentioned on
22 multiple occasions. We would join in Mr. Adams' remarks but,
23 more importantly, I hear Mr. Garrard referring to percentages
24 of cases, and I just want Your Honor to know that I do not
25 believe -- I'm not sure exactly what he's looking at, but

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1 those percentages do not comport with what our percentages
2 would represent at this time because I don't think we would
3 have any more than 10 percent. I think it's less than 10
4 percent. I just wanted the Court to be aware of that.

5 THE COURT: Well, as you will hear at the end of this
6 morning's conference, I have quite a few ideas that I intend
7 to implement with regard to -- that apply to many of the MDLs,
8 some to all of them. With some 70,000 cases, creativity has
9 not been difficult, and suggestions have not been sparse. I
10 had plenty of suggestions from plaintiffs and defendants about
11 what we should do and when we should do it and getting more
12 and more as the days go by.

13 I have made decisions about what I'm going to do and
14 I'll be telling you about that in a little while.

15 The next thing we have is Ethicon. The first topic
16 for that MDL is a general status update. Who will do that?

17 MR. AYLSTOCK: Your Honor, Bryan Aylstock.

18 THE COURT: Mr. Aylstock.

19 MR. AYLSTOCK: I can address that.

20 As this Court is aware, the Bellew case was set in
21 December and has now been reset to March 2nd, and we're
22 prepared to move forward with that case in this courtroom.

23 Also ongoing is the case -- the Perry case, which is
24 an SUI sling case. Mr. Cartmell, one of the co-leads, isn't
25 here today because he's in court today on that case. And --

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1 THE COURT: Is that the California case?

2 MR. AYLSTOCK: It is, Your Honor, Bakersfield,
3 California.

4 And, furthermore, in New Jersey today, Judge
5 Martinotti is holding a conference as well. As of yet, he's
6 not set any cases for trial.

7 THE COURT: But he will.

8 MR. AYLSTOCK: He's still getting up to speed
9 after --

10 THE COURT: Judge Martinotti and I are friends and
11 have been in contact a number of times, in this MDL as well as
12 previous ones. You may have noticed that we've pretty much
13 decided that we are not going to try to see who can be the
14 most deferential to the other. If there are conflicting
15 schedules, so be it. We just have to find lawyers to attend
16 the proceedings in both places. Go ahead.

17 MR. AYLSTOCK: And, luckily for us, we have a lot of
18 lawyers so we can do that.

19 And, as far as that goes, there is no other trials in
20 Ethicon currently set before this Court which kind of bleeds
21 into the next couple of topics, so I don't know if Ms. Jones
22 has any response, but we can move on to the next topic, as the
23 Court would like.

24 THE COURT: Ms. Jones?

25 MS. JONES: I don't really have a whole lot to add,

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1 Your Honor, with respect to the status. There are obviously
2 other cases set for trial outside of this MDL in various other
3 state court cases.

4 I think the issues that are listed on the agenda are
5 matters that we had previously obviously submitted to the
6 Court and briefed for Your Honor, and if Your Honor wants to
7 take those up individually and specifically, we would be happy
8 to do so.

9 THE COURT: Do you want to?

10 MS. JONES: I think, Your Honor, in all candor, I
11 think that that is something that, at least as to the motion
12 to revise case management order that we have submitted to Your
13 Honor, the parties have briefed it, made suggestions. We
14 would be happy to talk with them. I think some of those are
15 perhaps things that we should talk out about how we can
16 address them.

17 As to -- the plaintiffs and the defendants have
18 presented different suggestions for how we move forward in
19 terms of setting additional cases for trial, and I think both
20 parties are prepared to move together to get cases ready for
21 trial. We have a little bit of disagreement as to which cases
22 we ought to be focusing on, and I'm happy to discuss that. To
23 the extent that the Court is inclined to consider specifically
24 the plaintiffs' recommendations made yesterday, we would like
25 to have a short hearing time to respond to the specific things

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1 and suggestions that were made there. And beyond that, I'm
2 happy to address that or to discuss those with the Court.

3 THE COURT: I think I have sufficient information
4 based on the filings and the briefings to be able to address
5 it. In fact, I have a draft of an order, which I should be
6 able to get out within a day or two.

7 As to the setting of cases, that's something I want
8 to -- I would be glad to have input from both sides as much as
9 you want, and we'll address that at a later time.

10 MS. JONES: That's fine. There are some areas that
11 we would like to address as to that specific issue but I'm
12 happy to -- to prepare that and to present that at the time
13 that the Court requests it.

14 THE COURT: All right. Let's turn to Boston
15 Scientific. The first topic is a general status update. Who
16 will report for the plaintiffs?

17 MR. CLARK: Clayton Clark, Your Honor.

18 THE COURT: Mr. Clark.

19 MR. CLARK: Your Honor, I believe that the Court is
20 fairly aware of the recent progress with the Boston Scientific
21 MDL. With the two different consolidations having been tried,
22 we are really in a position now where we're, I think, both
23 waiting for the Court to give us some direction on where we go
24 with regard to how many cases will be remanded, where they
25 will be remanded, how they will be tried. I do envision that

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1 process working, and I think that we have a good number of
2 cases being worked up in the waves. We certainly believe that
3 more cases should be added, due to the number that have been
4 filed.

5 We agree that there are a number of non-revision SUI
6 cases that are being worked up. We have no issue with there
7 being any particular groups added, so long as everything is
8 included.

9 And we're going to be urging the Court to, I think,
10 attempt to find a way where we can have large numbers of cases
11 tried, if not simultaneously, contemporaneously in different
12 courts so that we can manage the process and move the number
13 of cases toward trial in larger numbers, in hopes that that
14 will bring better resolution for both of us on the values of
15 the cases.

16 These -- the -- really, the issue for both of us is
17 what is the value of the cases. If we focus exclusively on
18 the 40 or 45 percent of the SUI cases with no surgery, we're
19 talking about 10 percent of the value of the litigation.
20 There is a large number of lawyers and business people in this
21 courtroom that are focusing exclusively on the value. If we
22 focus -- and the value is in the top 40 percent of the cases,
23 and that's where 80 percent of the value goes because of the
24 fact that these women are hurt the most. We would ask that
25 the Court give some consideration to that fact, that if we are

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1 going to move the docket along, focusing on the 50 percent of
2 the cases or 45 percent of the cases that are worth less than
3 10 percent of the value, that that probably would not move the
4 litigation along at all but, rather, stall it further.

5 So, where we are in Boston Scientific, we're looking
6 forward to the Court's thoughts as to where we go next, now
7 that we've had our first two sets of bellwether
8 consolidations.

9 THE COURT: All right. The defendant?

10 MR. ADAMS: Yes, Your Honor, just a couple of
11 comments to follow up on that.

12 As Mr. Clark said, we have been working our way
13 through the wave proceeding, and I think that that process has
14 been valuable in and of itself because, as Mr. Clark said,
15 people are here interested in the value of cases. We started
16 with 189 cases. We've already had 41 of those cases dismissed
17 with prejudice. And that shows you a point that I believe all
18 of the defendants have made in previous hearings, that we
19 believe a substantial volume of the inventory of the cases in
20 these MDLs may turn out, when the focus of discovery is upon
21 them, they may get dismissed with prejudice.

22 We also have a number of other motions that the Court
23 is aware of that may be dispositive of other cases. I think
24 approximately ten.

25 I have suggestions for the Court, possibly your

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1 clerk, about what would be an expedient way to work through
2 some of the motions that are currently on file in the wave
3 process. I'm happy to go through that now or we could do this
4 at an individual meeting.

5 THE COURT: Why don't we do it in an individual
6 meeting.

7 MR. ADAMS: Okay. Okay.

8 With respect to cases that should be set for trial,
9 Mr. Clark made the point that we ought to set cases that have
10 the more egregious injuries. That is exactly the type of case
11 that Boston Scientific has been trying already. As I said
12 before, we've tried cases involving 11 plaintiffs, and all of
13 them, except for one, which was the POP case that we tried
14 called *Albright*, all of them had multiple revisions. And so I
15 think to the extent we're looking for benchmarks, we have
16 benchmarks in the top 10 percent of egregious cases. We need
17 benchmarks for trial in the SUI cases with non-revisions or no
18 revisions.

19 THE COURT: Well, again, I'm going to address in a
20 more -- in a very specific but in general comments where I'm
21 headed in almost every MDL at the end.

22 But as to Boston Scientific, let's turn to *Sanchez*
23 and *Hall* and let me tell you where I am on that.

24 The *Sanchez* case is ready for transfer to the
25 appropriate Federal Court in California. All the pending

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1 motions have been completed, although not filed. Sanchez, the
2 plaintiff's short-form complaint identified the United States
3 District Court for the Central District of California, Western
4 Division, as the appropriate court for remand. I need to know
5 from defendants if you're in agreement with that?

6 MR. ADAMS: Yes, Your Honor, I believe that's
7 correct.

8 THE COURT: That's where it will be going.

9 I'm also in the process of considering the Hall case,
10 the other former bellwether. I need to know if there is
11 agreement among the parties that the District of Minnesota is
12 the appropriate jurisdiction. The plaintiff is a Wisconsin
13 resident.

14 MR. ADAMS: Yes. We believe that it should be in the
15 District Court in Wisconsin, Your Honor.

16 THE COURT: In Wisconsin?

17 MR. ADAMS: Yes.

18 THE COURT: What says the plaintiff? Do you want to
19 get to me later?

20 MR. CLARK: I think we're going to have to get with
21 that case later, Your Honor.

22 THE COURT: I can tell from the look on
23 Ms. Wagstaff's face.

24 (Laughter.)

25 MR. ADAMS: Your Honor, I did have one point about

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1 *Sanchez.*

2 THE COURT: All right.

3 MR. ADAMS: *Sanchez*, there is a significant amount of
4 work that needs to be done in that case to update it. The
5 plaintiff was --

6 THE COURT: Well, I am going to disagree, and you're
7 going to have to try to persuade a judge who I'm going to tell
8 that the case is ready for trial and please not to let you do
9 any more work, please not to let you do any more discovery,
10 please not to allow any motion practice, but to set it for
11 trial within 30 to 60 days. So you might -- you're just going
12 to have to convince whatever judge gets it.

13 MR. ADAMS: Understood.

14 THE COURT: It's something that I don't buy.

15 All right. That's all on *Sanchez* and *Hall*.

16 Are we ready to go to Bard?

17 The first topic is a general status update.

18 MR. GARRARD: Yes, Your Honor. Henry Garrard.

19 THE COURT: Mr. Garrard.

20 MR. GARRARD: As Your Honor knows, we have a trial
21 set February 18th in the Wise case. We have a pretrial then
22 on Monday. We expect that case to go to trial. The Court has
23 given us six trial days, and we are working as hard as we can
24 work to meet that directive from Your Honor.

25 We have Wave 1 and 2 cases that we have all been

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1 working diligently on, with the exception of a couple of
2 experts who it has been difficult to get the dates for. Most
3 cases, discovery has been completed. Motions, as Your Honor
4 is aware, have been filed and refiled. We have designated --
5 will be designating, I think by Friday, experts in specific
6 cases, as Your Honor has directed. And those cases will
7 shortly be ready to be moved, remanded, consolidated, whatever
8 Your Honor decides to do.

9 We have another wave of 300 cases. We have worked
10 with the Court and carved out 60 of those cases to have
11 discovery finishing first. We are working on that.

12 We have worked together in terms of being able to do
13 short depositions of treating physicians, and that is working
14 out as well as one could expect it to work out.

15 We will then have to start on the next portion of
16 Wave 3. There have been some dismissals of cases from Waves 1
17 and 2 and Wave 3 for various reasons, which I won't go into
18 here, some were very personal to the client, that have caused
19 the cases to be dismissed. There were other reasons that
20 cases have been dismissed. I don't think one can construe
21 from dismissals any particular reason in all of the cases.

22 In New Jersey, I attended the session with Judge
23 Martinotti a couple weeks ago. Judge Martinotti is very
24 vested in the Bard cases, very much wants to see what he can
25 do in terms of moving forward, frankly, the resolution

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1 process. I don't know where that's going. But he is
2 interested in that and wants to explore that I believe before
3 he explores setting trials in the Bard MDL.

4 I think that's basically the report at this moment,
5 Judge.

6 THE COURT: All right. Defendant?

7 MS. COHEN: Thank you, Your Honor.

8 THE COURT: Ms. Cohen?

9 MS. COHEN: Just a few additional comments. I think
10 Mr. Garrard covered most of it.

11 Judge Martinotti is visiting with the attorneys this
12 morning in New Jersey, as you know.

13 In the Pretrial Order 118, Bard 200 set of cases,
14 just to give the Court an update and consistent with
15 Mr. Adams' comments, there are 155 left of those, so 45 of
16 those have been dismissed, for one reason or another. And, as
17 you know, those cases with the motions pending and once ruled
18 upon will be at the end of the schedule and ready for remand
19 or trial, and I know Your Honor will address that later.

20 On the Pretrial Order 163 and the subsequent pretrial
21 orders that modify those with the Bard 300, there are 246
22 cases of those that remain, so some 54, again, for one reason
23 or another, have been dismissed of those, and, as Mr. Garrard
24 accurately reported, we are finishing the treating physician
25 phase which, as the Court again knows, there was a lot of

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1 discussion about that, but we are finally going to be finished
2 with those and then we will be moving into the expert witness
3 phase of those.

4 The only other thing I would say is that there is a
5 motion, a consolidation motion pending, and I know Your Honor
6 is going to address that. We had asked for a hearing on that.
7 We think that that should be addressed in a separate hearing,
8 and we have made that request, so I'll reiterate that again.

9 And then, finally, I think I was having trouble
10 hearing earlier when I stood up. We have had not had any SUI
11 cases either scheduled for trial or set for trial, and even
12 though some of the defendants have tried some of them, we have
13 had none of them in this setting or anywhere else, so, again,
14 with 70 percent of the inventory, we are very interested in
15 those as hallmarks for value.

16 And that's I think all I would add to what
17 Mr. Garrard said.

18 THE COURT: Thank you. I'm keenly aware of that and
19 I intend to take care of it.

20 MS. COHEN: Thank you, Your Honor.

21 THE COURT: The next is American Medical Systems, and
22 I'm going to go off the record because they're going to talk
23 about a tentative settlement. I think what they have to say
24 is valuable to everyone here.

25 (Discussion held off the record.)

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1 THE COURT: I would like to commend Endo's management
2 and counsel, particularly Jen Dubas, Ellen Reisman, and Ethan
3 Greene, for their commitment to achieving resolution of these
4 cases. I recognize that it was not easy, but the company
5 persevered and had dedicated, experienced settlement counsel
6 working full time. As a result, AMS was able to achieve
7 settlements that were in the best interests of the company and
8 its shareholders, as well as the women who suffered injuries.
9 Obviously, this conserved judicial resources and is of benefit
10 to the taxpayers.

11 I also want to commend the hard work of plaintiffs'
12 leadership and others, and I'm not going to try to do this in
13 any order. But I'm very familiar with the work of Harris
14 Junnell, and I want to commend him and his firm. I want to
15 commend Joe Rice, Henry Garrard, Bryan Aylstock, and others,
16 not to mention the over 200 law firms that worked hard to get
17 to this settlement. I was hesitant to do that because I knew
18 I was going to leave everybody out and somebody like Clayton
19 might get mad at me but --

20 (Laughter.)

21 THE COURT: -- I'll just have to stop there and say
22 that I'm very proud that there was a calm, rational, reasoned
23 global attempt. I'll talk more about that at the end. My
24 remarks at the end may not be eloquent, but they have been
25 thought out. So I'm not going to ask you to take notes

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1 because there will be a transcript and I'll be afraid to read
2 it after I finish but I'll do the best I can.

3 I'm pleased that the mesh litigation is largely over
4 as to AMS. I know that there is still a few firms that
5 haven't joined the settlement, and given that virtually all of
6 the leadership and the plaintiffs' bar have reached resolution
7 with AMS, I'm confident the remaining firms will be able to do
8 so. I encourage them to do so, acting in the best interests
9 of their clients.

10 The work that AMS and its counsel have done can
11 benefit, and the plaintiffs' counsel, can benefit other cases.
12 I believe there is much to the structuring -- well, let me say
13 methodology, methodology, that can be used in other cases.

14 And I think we'll try to have an opportunity somehow
15 to get that information to you a little later.

16 Let me turn to Coloplast, another featured player
17 today. For the plaintiffs? We are still off the record.

18 (Discussion held off the record.)

19 THE COURT: I want to thank Lana Varney, Ronn Kreps,
20 Skeeter Salim -- Robert Salim, Riley Burnette for their
21 progress and work in Coloplast. While it's a much smaller MDL
22 than AMS, there is much to take away from these settlements as
23 well, the methodologies that they have used, and there are
24 many similarities with the AMS packet. So I think there are
25 things to be learned from both of these groups.

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1 Let's turn next to Cook. We are still on the record
2 now. Who will begin a general status update for that MDL?

3 MR. ANDERSON: Good morning, Your Honor. Ben
4 Anderson on behalf of the Cook plaintiffs.

5 THE COURT: Mr. Anderson.

6 MR. ANDERSON: Just a quick update. As Your Honor
7 knows, you have recently selected four bellwether plaintiffs
8 for three upcoming bellwether trials, one being an optional in
9 case certain issues pan out from the first trial. Those are
10 to begin in April. And, given that I will be trying the
11 Bellew case with you in March, Your Honor, that means we will
12 be seeing a lot of each other in March, April, May, June, and
13 July. And I would ask for an order that you and I be allowed
14 to go on holiday after that, please.

15 (Laughter.)

16 THE COURT: I confessed to somebody yesterday that I
17 would much rather sit here than I would back there. I
18 actually enjoy trials. I think there are an awful lot of
19 judges on the bench anymore that can't, by any legitimate
20 measure, call themselves a trial judge. I would also suggest
21 there are a lot of lawyers that say they're trial lawyers that
22 haven't tried any cases, either. But I look forward to it. I
23 look forward to seeing you.

24 Anybody want to speak for the other side?

25 MR. KING: Your Honor, Doug King for Cook.

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1 Nothing really to add. We're preparing the cases for
2 trial, as you know.

3 THE COURT: Yes, sir.

4 MR. KING: We're ready to go.

5 THE COURT: All right.

6 MR. KING: Thank you, sir.

7 THE COURT: I ask you to listen now to what I have to
8 say. You can feel free to ignore anything that's corny or
9 purple prose and recognize that these particular remarks have
10 not had the benefit of a law clerk to take out the language
11 that they would normally remove from my efforts.

12 Resident today in this very nice courthouse are a
13 bunch of black boxes or servers containing digital files, each
14 of which has many complaints against one or more of the
15 medical-device manufacturers represented here today. There
16 are more than 70,000 individual lawsuits against these
17 corporate entities. Each of these lawsuits embodies a
18 conflict which the legal system of the United States is
19 obligated to resolve.

20 My role with regard to each of these conflicts is to
21 apply appropriate procedures in the law to the end that I do
22 justice to my part of each case. My very passing familiarity
23 with John Rawls tells me that any rational person inhabiting
24 the original position behind the veil of ignorance can deliver
25 justice. Of course, that person must not only be rational but

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1 also impartial and inexperienced, or, as he puts it, ignorant.

2 As one with more than 25 years' experience as a
3 litigator and 20 years as a federal judge, I am well
4 acquainted with the requirements for a good justice hunt in an
5 individual case. But this is no ordinary hunt. I view the
6 more than 70,000 cases through the lens of my experience and
7 those procedures and laws that I mentioned before. I see
8 disputes that must each be addressed and resolved. Each case
9 assigned to me is assigned for full pretrial development, but
10 the Congress of the United States has only allowed 678 Article
11 III Federal District Judges. We have a few more because of
12 our senior judge system, but, all in all, a paltry few are
13 available. The entire federal judiciary cannot individually
14 develop and try 70,000 cases within the professional lifetime
15 of anyone in this courtroom.

16 So, we're faced with a conundrum. Conundrums arising
17 from multiple conflicts usually drive those so confronted to
18 travel down one of two paths:

19 The first path is cyclical and often downwardly
20 spiralling in adversity. Most try to avoid this, if they can
21 at all, by procrastination and inactivity. Others pretend
22 that they're preparing to travel down a different path but
23 they fail to take any meaningful step to begin the journey.
24 Those who choose the first path usually find that each step
25 along it becomes more radical. In our present circumstance,

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1 the first path will never lead to complete resolution.

2 Those of you who were or are to this day involved in
3 the world of asbestos have some knowledge of the obstacles on
4 such a path.

5 Success on the second path begins with a recasting of
6 these enormous numbers of conflicts in a form that can be
7 dealt with, and then the path leads to a pretty steep climb to
8 mutual trust and a cooperative endeavor.

9 Some of you, like AMS, Coloplast, have already done
10 this. The rest of you will hear more presentations which
11 describe ways to go which fall within my definition of the
12 second path.

13 I hope to end on a hopeful note but, first, I feel
14 compelled to describe what lays ahead for those of you who are
15 either doing nothing or who have taken steps down the first
16 path.

17 One of the advantages of our long acquaintance is you
18 know that I say what I mean and I mean what I say.

19 Ahead of you lies more individual trials this year.
20 Ahead of you lies preparation for and trial of consolidated
21 cases this calendar year. Ahead of you lies joinder of cases
22 on issues to be decided. Ahead lie mass remands and trials in
23 several jurisdictions within the next few months. Ahead, we
24 will have more accelerated discovery.

25 If you genuinely feel like you need more information

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1 before beginning to travel a path to resolution, then that
2 information is forthcoming in spades this year. Please
3 believe me that each side will lose cases at trial. And the
4 verdict in any trial will ask louder than before whether more
5 was lost or gained by going to trial.

6 With the approval of the Fourth Circuit Court of
7 Appeals, I'm staffing up for a crush of business. I'm adding
8 three law clerks on the 1st of March to my current staff of
9 able law clerks and paralegals. I will be able to keep up
10 with you. Deadlines from here on out will be firm, and you
11 should arrange to cover what will be many conflicts in
12 schedules. That's the description of the immediate steps that
13 lie ahead on path one.

14 I said I wanted to be hopeful. I want to emphasize
15 that there is and always will be, always will be, a choice to
16 pursue an alternate path, focused on resolution by settlement.
17 I want to appeal to your better and more reasonable angels. I
18 ask you today to consider putting aside your present
19 intentions to tread the first described path. It is going to
20 be much rockier and more difficult than it has been over the
21 past few years.

22 I ask you, please, to forsake procrastination. It's
23 simply a thief of time and money. No one on the plaintiffs'
24 side can believe that delay is in their best interests. I'm
25 sure that the calls from your clients are becoming more

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1 strident, and that stridency is justified. No one on the
2 defense side can believe that delay is in their best
3 interests. You've read the studies. Your managers have read
4 the studies. Litigation costs, without consideration of
5 settlements or judgments, are growing at a rate in excess of
6 10 percent a year, and have been for 15 years or more.

7 Accountants or auditors are becoming more
8 inquisitive. The market is becoming more concerned about
9 possible exposure in cases like these. Global resolution,
10 without thousands of trials, will occur. The law requires
11 that filed lawsuits be resolved. When that occurs will depend
12 upon how difficult it is for the decision makers on each side
13 to stop procrastinating or pretending that the problem doesn't
14 exist.

15 These cases will not evaporate simply by the passage
16 of time, and we cannot try them all one by one by one.
17 I ask you to start by facing reality. Realize that you have
18 the information. You now have the information that you need
19 to begin mapping a path to settlement. Start by recasting, as
20 AMS did, the conflicts as one problem, not as this thousands
21 of cases. You can do that without much distortion, based on
22 what you now know. Agree on steps that each side can verify.

23 As I suggested earlier, the first part of the path is
24 a very steep climb to mutual trust. A lot of the motion
25 practice lately has not been helpful in leading up that path.

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1 But once we are to get there, to a position of mutual trust,
2 you can find the path, you can see the path to find a
3 resolution.

4 What I said earlier when I was not being hopeful, as
5 I am now, was not meant, and those of you who know me know it
6 was not meant as a threat. It's a statement of present
7 intention of what we're going to do. And I have geared up in
8 my own way and planned in my own way to do things the best way
9 I know how. I know that it places substantial burdens on
10 everybody. I'm not enthusiastic about some of it myself.

11 People say, "Well, Judge, you just got to go to
12 Miami, Florida, spend two weeks trying cases in beautiful
13 Miami." You know, so the Chamber of Commerce in Florida
14 doesn't get too angry, it does seem like a pretty town and I
15 did have some good meals, but the inside of one hotel room and
16 the inside of one courtroom, as you trial lawyers know, looks
17 pretty much like any other. So my road show, while necessary
18 because of the failure of the parties to waive Lexecon, may
19 well continue, but I don't take any great joy in it. I don't
20 have anywhere I really want to go.

21 Before I conclude, I want to turn to my learned
22 colleague, Judge Eifert. As many of you know, she is as good
23 at resolving discovery disputes as any judge you've ever
24 appeared before. She has the experience as a trial lawyer on
25 both sides of cases to be practical, and she doesn't put up

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1 with a lot of nonsense.

2 I have to tell you a secret. I said at one of our
3 meetings, you may remember, that there is no excuse for a
4 judge to be mean. As we left the courtroom, she said, "I
5 disagree with that."

6 (Laughter.)

7 THE COURT: Judge Eifert?

8 MAGISTRATE JUDGE EIFERT: I have nothing to add to
9 that.

10 (Laughter.)

11 MAGISTRATE JUDGE EIFERT: I'm not looking forward to
12 it either, believe me, but, clearly, there is a lot to be
13 done. So we're all in this together.

14 THE COURT: We are. As I look at it, it's
15 schizophrenic for me. I like all of you all. I've had a good
16 time. I've gotten to know some really good lawyers and I'm
17 going to get to know some of you a lot better, it seems. But
18 it doesn't -- that very familiarity, and the length of time
19 that we've known each other, nags in the back of my head as a
20 failure to do my job in an expedient way. So I'm going to
21 kick it into high gear and ask you to do the same, and we'll
22 do the very best we can.

23 Thanks for coming. That concludes our status
24 conference. Let's go off the record, please.

25 (Discussion held off the record.)

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1 (The proceedings concluded at 11:22 a.m.)
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REPORTER'S CERTIFICATE

I, **Carol Farrell, CRR, RMR, CCP, RSA, RPR**, Official Court
Reporter of the United States District Court for the Southern
District of West Virginia, do hereby certify that the
foregoing is a true and accurate transcript, to the best of my
ability, of the proceedings as taken stenographically by and
before me at the time, place, and on the date hereinbefore set
forth.

12 /S/ Carol Farrell, CRR, RMR, CCP, RPR

02/05/15

Court Reporter

Date